IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

WP(C).No. 27511 of 2007(A)

PETITIONER:

PRATHEESH MOOLEPAD,
S/O.KOLLANNUR CHERUKUTTY, AGED 29 YEARS,
JUNIOR HINDI TEACHER (RETRENCHED)
HIGH SCHOOL, PENGAMUCK, CHAVAKKAD - 680 544,
THRISSUR DISTRICT.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:

---

1. THE STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, TRIVANDRUM.

2. THE DISTRICT EDUCATIONAL OFFICER
CHAVAKKAD, THRISSUR DISTRICT.

3. THE MANAGER,
HIGH SCHOOL, PENGAMUCK,
CHAVAKKD - 680 544, THRISSUR DISTRICT.

BY GOVERNMENT PLEADER SRI. A.J. VARGHESE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

W.P.(C)NO.27511 OF 2007

DATED THIS THE 17th DAY OF SEPTEMBER, 2007

JUDGMENT

The petitioner was a Junior Hindi Language Teacher working in the school managed by the 3rd respondent for periods from 20.06.2000 to 1.11.2000 and from 6.11.2000 to 20.03.2001. These appointments were approved by the Educational Officer. Thereafter, the petitioner was re-appointed from 20.6.2004 onwards against a promotion vacancy which was also approved. However, for the academic year 2007-2008 there was a division fall in the school consequent to which the petitioner was retrenched from service. By that time there arose a retirement vacancy of Full Time Menial in the same school. The petitioner submits that the petitioner is entitled to be considered for appointment to that post in recognition of his right under Rule 51A of Chapter XIV(A) read with rule 7 of Chapter XXIV(B). The contention is that since Rule 51A of Chapter XIV(A) is applicable mutatis mutandis to non-teaching staff of aided schools and Rule 51A of Chapter XIVA has been amended clarifying that the

benefit under Rule 51A in the same or higher or lower category of teaching post, the petitioner is entitled to be considered for appointment to the post of Full Time Menial in recognition of his right under Rule 51A, of Chapter XIV(A).

2. I have considered the contentions of the petitioner. Rule 51A of Chapter XIV(A)reads thus:

> "[86][51A. Qualified teachers who are relieved as per Rule 49 or 52 on account of termination of vacancies shall have preference for appointment to future vacancies [87] [in the same or higher or lower category of teaching posts, for which he is qualified, that may arise] in schools under the same Educational Agency [88] [or an Educational Agency to which the school may be subsequently transferred]provided that they have not been appointed in permanent vacancies in schools under any other Educational Agency.
>
> [89] ["provided that a teacher who was relieved under rule 49 or rule 52 shall not be entitled to preference for appointment under this rule unless such teacher has a minimum continues service of one academic year as on the date of relief.
>
> Provided further that the first preference under this rule shall be given to protected teachers"]"

3. Rule 7 of Chapter XXIV(B) reads thus:

> "7. The rules regarding appointment, probation [1][increment] [2][transfer from one educational agency to another educational agency or transfer under the same educational agency] [3][discipline, maintenance of service records confirmation, promotion, seniority, and

> maintenance of seniority list]contained in Chapter XIV(A)and the Conduct Rules in Chapter XIV(C)applicable to teachers of aided school shall mutatis mutandis apply to the non-teaching staff in aided schools".

The question of referring to Rule 27 of Chapter XXIV(B) does not arise in this case since the petitioner is a retrenched teacher and therefore it is Rules 51A of Chapter XIV(A) itself which is applicable to the petitioner. That being so, the petitioner's claim under Rule 51A is to future vacancies in the same or higher or lower category of teaching posts. As such, the petitioner cannot claim preference in appointment to the post of Full Time Menial in recognition of his right under Rule 51A of Chapter XIV(A).

4. Even if Rule 7 of Chapter XXIV(B) is to be applied then Rule 51A of Chapter XIV(A) of K.E.R. as applicable to non-teaching staff would have to be read thus:

> "Qualified non-teaching staff who are relieved as per Rule 49 or 52 or on account of termination of vacancies shall have preference for appointment to future vacancies in the same or higher or lower category of non-teaching posts ....."

In such case also petitioner would not get any preferential claim for appointment to the post of Full Time Menial. Therefore on that ground also, the petitioner is not entitled to

preferential appointment to the post of Full Time Menial in the 3rd respondent's school in recognition of right under Rule 51A of Chapter XIV(A)of K.E.R. Therefore, I do not find any merit in this writ petition and accordingly, the same is dismissed.

S. SIRI JAGAN, JUDGE

Acd